

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ACCREDO HEALTH, INC.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

) Civil Action No. 03-2216-BBD

) CLASS ACTION

) LEAD PLAINTIFFS' MOTION *IN*
) *LIMINE* NO. 9 REQUESTING
) JUDICIAL NOTICE THAT
) NASDAQ IS AN "EFFICIENT
) MARKET"

Lead Plaintiffs, Louisiana School Employees' Retirement System ("LSERS") and Debra Swiman ("Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully move the Court to take judicial notice that the NASDAQ is an "efficient market."

In *Basic v. Levinson*, 485 U.S. 224 (1988), the Supreme Court adopted the "fraud-on-the-market" theory, a rebuttable presumption of reliance on the alleged fraud for securities whose stocks were traded on efficient, well-developed markets. The Court based its decision in part on academic studies which indicated that in such efficient markets, the market price of the stock was likely to reflect all publicly available information regarding that stock, and that any reliance on the price of the stock was therefore, in effect, a reliance on all information going into the determination of the market price. *Basic*, 485 U.S. at 246. *See also Freeman v. Laventhol & Horvath*, 915 F.2d 193, 197 (6th Cir. 1990) ("[t]he fraud on the market theory rests on the assumption that the price of an actively traded security in an open, well-developed, and efficient market reflects all the available information about the value of the company"). As the Sixth Circuit noted, "it appears that securities traded in national secondary markets such as the New York Stock Exchange . . . are well suited for application of the fraud on the market theory. The high level of trading activity ensures that information from many sources is disseminated into the marketplace and consequently is reflected in the market price." *Id.* at 199.

Here, the Court has already determined that Accredo's stock was traded on the NASDAQ stock exchange, a national secondary market, during the entire class period. On March 7, 2006, Magistrate Judge Tu M. Pham issued a Report and Recommendation granting Lead Plaintiffs' motion for class certification and appointed LSERS and Mrs. Swiman as class representatives. *See* March 7, 2006 Report and Recommendation [Doc. No. 180] at 14. On April 19, 2006, this

Court adopted the Report and Recommendation of the Magistrate Judge. *See* Order Adopting Report and Recommendation in full [Doc. No. 191]; *In re Accredo Health, Inc. Sec. Litig.*, 2006 WL 1716910 (W.D. Tenn. 2006). As the Report and Recommendation held, “the overwhelming case authority holds that securities listed on the NASDAQ trade in an efficient market.” Report and Recommendation at 16-17 (collecting cases).

In light of the overwhelming authority, and this Court’s prior Order adopting the Magistrate Judge’s Report and Recommendation that the NASDAQ is an “efficient” market, the Court should take judicial notice of the fact of the NASDAQ’s efficiency for the purposes of this litigation. Judicial notice will avoid unnecessary confusion, save time, and streamline this case for the jury.

Dated: September 8, 2008

Respectfully submitted,

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